

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NARCISO AND MARIE M. SANCHEZ,)
)
 Plaintiffs,)
 vs.)
)
 THE BANK OF NEW YORK AS TRUSTEE)
 FOR ASSET-BACKED CERTIFICATES)
 TRUST 2005-1, DBA "TRUSTEE CORPS")
 AND BANK OF AMERICA, N.A. DBA)
 "BAC HOME LOAN SERVICING, LLP")
 AND TRUSTEE CORPS,)
)
 Defendants.)

Case No.: 2:15-cv-01249-GMN-GWF

ORDER

Pending before the Court is the Motion to Dismiss (ECF No. 6) filed by Defendants The Bank of New York as Trustee for Asset-Backed Certificates Trust 2005-1, DBA "Trustee Corps" ("BONY") and Bank of America, N.A. ("BANA") (collectively, "Defendants"). Plaintiffs Narciso and Marie M. Sanchez ("Plaintiffs") did not file a response. However, four days after the deadline to file a response, Plaintiffs filed a Motion to Amend Complaint (ECF No. 11). To date, no points or authorities have been filed in opposition to the Motion to Amend.

Rule 15(a)(2) provides that "[t]he court should freely give leave [to amend] when justice so requires," and when there is no "undue delay, bad faith [,] dilatory motive on the part of the movant ... undue prejudice to the opposing party by virtue of ... the amendment, [or] futility." Fed. R. Civ. P. 15(a); *Foman v. Davis*, 371 U.S. 178, 182, 222 (1962). Generally, leave to amend is only denied when it is clear that the deficiencies of the complaint cannot be cured by amendment. *See DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655, 658 (9th Cir. 1992). As

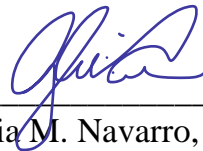
1 stated above, Defendants have failed to file any points or authorities in opposition to Plaintiffs'
2 Motion to Amend as allowed by LR 7-2(d). LR 7-2(d) provides that "failure of an opposing
3 party to file points and authorities in response to any motion shall constitute a consent to the
4 granting of the motion." LR 7-2(d).

5 Accordingly, Plaintiffs' Motion to Amend is granted pursuant to Fed. R. Civ. P. 15, and
6 LR 7-2(d). Additionally, because Defendants' Motion to Dismiss (ECF No. 6) is based on the
7 allegations of the original Complaint, said Motion is denied as moot.

8 **IT IS HEREBY ORDERED** that Plaintiffs' Motion to Amend Complaint (ECF No. 11)
9 is **GRANTED**.

10 **IT IS FURTHER ORDERED** that Defendants' Motion to Dismiss (ECF No. 6) is
11 **DENIED as moot**.

12 **DATED** this 28 day of October, 2015.

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19 Gloria M. Navarro, Chief Judge
20 United States District Judge
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